

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND

THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1216 of 2007

K. Jayaraman

.. Petitioner

Vs

1. State
rep. by Commissioner of Police
Trichy.
2. The State of Tamil Nadu,
rep. by the Secretary
Public (Law and Order) Department
Fort St. George, Secretariat
Chennai 600009.
3. The Secretary to Govt. of India
Ministry of Home Affairs
Department of Internal Security
North Block, New Delhi-1.

.. Respondents

Prayer in W.P.No.1216: Petitions filed under Article 226 of the constitution of India for issue of writ of Habeas Corpus, to call for the entire records culminating in the passing of the order of detention of the petitioner under section 3(2) of N.S.Act vide Detention Order Memo No.CPO/TC/IS/NSA/D.O.No.15/2007 dated 30.6.2007 on the file of the first respondent and quash the same as illegal and consequently direct the respondents to produce the body and person of the petitioner by name K.Jayaraman, Son of Kalimuthu from Central Prison, Trichy before this Honourable Court and thereafter set him at liberty.

For Petitioner : Mr.N.Chandrasekaran
For Respondents-1&2 : Mr.N.R.Elango
Additional Public Prosecutor
For Respondent-3 : Mr.P.Kumaresan
ACGSC

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

Challenging the order of detention dated 30.6.2007 passed by the first respondent herein in CPO/TC/IS/NSA/D.O.No.15/2007, against one Jeyaraman, the petitioner-detenu herein, in exercise of the powers conferred under sub Section (2) of Section 3 of the National Security Act, 1980 (Central Act 65 of 1980) read with orders issued by the Government in G.O.Ms.No.535 Public (Law and Order-F) Department dated 11.4.2007 under sub-section (3) of Section 3 of the Act, the petitioner seeks writ of habeas corpus, to call for the records in connection with the detention order dated 30.6.2007, quash the same and to direct the respondents to produce the body of the detenu, now detained in Central Prison, Tiruchirappalli and set him at liberty.

2.1. The ground case, on the basis of which the detaining authority viz., the Commissioner of Police, Tiruchirappalli City, passed the impugned detention order, is that one Arulseeelan was found in a suspicious manner and a sum of Rs.10 lakh was recovered. He could not account for possession of such amount, nor he could account for his presence at the place in the early morning and also he failed to produce valid document. Thereafter, he was arrested and his confession statement was recorded. In the confession, he stated that one Ragulan @ Antony, a known LTTE Cadre, procuring and smuggling explosive materials and other essential commodities from the soil of India to Srilanka, had given him the money with an instruction to hand over the same to a person in Madurai for procuring iron balls (for being used to make explosives and bombs). The said Arulseeelan further confessed that he had already given Rs.10 lakhs on a previous occasion to a person in Madurai as instructed by Ragulan @ Antony, to procure iron balls for LTTE, though he was aware that the organisation was banned in India. Later, it was known that the amount of Rs.10 lakh was brought by one of the accused Pradheepan @ Thillai @ Dheepan, who received the amount from another accused Idayathullah of Chennai and handed over to Ragulan @ Antony at the house of Arulseeelan.

2.2. A case was registered in Crime No.1 of 2007 under Section 102 Cr.P.C., Section 120-B I.P.C., Sections 10 and 13(1)(2) of Unlawful Activities (Prevention) Act, 1967, Section 14 of the Foreigners Act and Section 5 of the Explosive Substances Act. Thereafter, the accused Arulseeelan, after being produced, was remanded by the Magistrate. During investigation, accused Regular @ Antony was arrested on 7.3.2007 and

remanded to judicial custody. On the basis of his voluntary confession statement, police party proceeded to Perambalur and recovered 4.5 tonnes of iron balls meant for despatch to LTTE, a banned outfit in India, and arrested his associates Pradheepan @ Dheepan @ Thillai and Bakeerathan @ Elavan on 7.3.2007 and Idayathullah and Seema Basheer @ Basheer Ahamad, who helped the LTTE in money transaction on 7.3.2007 and 20.3.2007 respectively. One Raju, who arranged to smuggle the iron balls and other materials from Ramanathapuram sea-shore to Srilanka with other accused, was arrested on 8.3.2007. A cell phone which was given by Ragulan @ Antony was recovered from him. One Sugu @ Sugumar, a mini lorry driver, was arrested on 19.3.2007 and a cell phone and mini lorry purchased from the funds offered by LTTE in the name of one Jeyaraman, the detenu herein, for transporting materials like iron balls, lathe etc., were recovered. The detenu was arrested on 5.6.2007 and 140 kg of iron balls were recovered.

2.3. Enquiry revealed that the detenu herein had friendship with Sathish, who is an LTTE cadre, and procured materials needed by LTTE and smuggled to Srilanka along with other accused Siva @ Sivakumar, Ramachandran, Ramesh @ Rameshkumar and Sugu @ Sugumar. During October 2006, the detenu and his associates conspired to smuggle iron balls, aluminium bars, lathe machine, acid canes and motors etc. to Srilanka for making new kind of bombs. Accordingly, the detenu came to Madurai with Siva @ Sivakumar and transported lathe machine, aluminium bar, in a van to Ramanathapuram. During January 2007, 150 bags of iron balls were purchased by one of the co-accused and kept in a room at Perambalur. Ragulan sent Rs.10/- lakhs through Arulseeelan which was received by the detenu and handed over to Sathish at Madurai. When the detenu came to Udumalpet to take delivery of 140 kg of iron balls, he was arrested and remanded to judicial custody.

2.4. On the basis of these facts, the detaining authority has concluded:

"12. Hence, I am satisfied from the materials placed before me in the above case that the accused Jeyaraman has knowingly helped the LTTE, a banned organisation in India, for procuring materials and smuggling them to Srilanka clandestinely and thereby acted in a manner prejudicial to the security of the State, the relations of India with foreign country and maintenance of public order.

13. Investigation reveals that the iron balls seized from the accused in this case are used for making bombs by the LTTE. Illicit transportation of such materials and possession in the hands of such anti-national elements will really pose threat to the security of the State and also the maintenance of the public order.

2.5. The detaining authority, the first respondent herein, taking note of the above ground case and having satisfied that the activities of the said Jeyaraman are prejudicial to the security of the State, the

relations of India with foreign country and maintenance of public order and that there is compelling necessity to detain him under Section 3(2) of the National Security Act 1980 (Central Act 65 of 1980 in order to prevent him from indulging in such further activities in future which are prejudicial to the security of the State, the relations of India with foreign country and maintenance of public order, ordered his detention.

3. The learned counsel appearing for the petitioner, inviting our attention to the order of detention, which has been passed by the Commissioner of Police under Section 3(3) of the Act, contends that the impugned order of detention was passed on the ground that the detenu had acted in a manner prejudicial to the security of the State, the relations of India with foreign country and maintenance of public order. The act of prejudicial to the relations of India with foreign country attracts Section 3(1) of the Act, but not Section 3(2) or 3(3) of the Act. It is argued that as per Section 3 of the Act, the power to detain the detenu from acting in a manner prejudicial to the relationship of India with a foreign country, under the Act, is vested only with the Central Government or the State Government under Section 3(1) and (2) of the Act, but not with the detaining authority, viz., the Commissioner of Police, as the Commissioner of Police has not been delegated with such power to deal with matters coming within the scope of Section 3(1) of the Act.

4. At this juncture, it would be relevant to refer Section 3 of the Act, which reads as under.

3. Power to make orders detaining certain persons:- (1)
The Central Government or the State Government may:-

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, of the security of India, or

(b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India,

it is necessary so to do, make an order directing that such person be detained.

2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

...

(3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner

of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2), exercise the powers conferred by the said section:

Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time."

5. On perusal of the entire materials placed before us, we find some force in the contention raised by the learned counsel for the petitioner. The materials relied on by the detaining authority would show that the detenu had acted in a manner prejudicial to the security of the State, the relations of India with foreign country and maintenance of public order, which would attract only Section 3(1) of the Act, empowering the Central or State Government to pass detention order in cases where the detenu acts in a manner prejudicial to the relations of India with the foreign countries, inasmuch as the same is not governed under Section 3(2) and 3 (3) of the Act.

6. It is settled law that in the matter of passing detention orders, unless the power is specifically provided under the statute, the authorities cannot pass an order of detention, as otherwise, it would offend Articles 21 and 22 of the Constitution of India. We are, therefore, satisfied that the impugned order of detention dated 4.4.2007 lacks jurisdiction.

7. That apart, even with regard to the ground that the detenu had acted in a manner prejudicial to the maintenance of the public order for having knowingly helped the LTTE, a banned organisation in India, for procuring materials and smuggling them to Srilanka clandestinely, in our considered opinion, such assistance by the detenu to the LTTE, a banned organisation, for illicit transportation of the iron balls used for bombs, by itself, would not amount to an act prejudicial to the maintenance of the public order, nor would amount to pose threat to the security of the State as long as they are not used in India. Therefore, both the grounds relied on by the detaining authority for passing the impugned detention order fail.

8. Our view is fortified with the decision of a Division Bench of this Court in Thangavadivel vs. Government of Tamil Nadu (1992 L.W. (Cr1.) 43).

9. The Madurai Bench of Madras High Court has also taken the same view in respect of the similarly placed detenu in H.C.P. (MD) No.263 of 2007, dated 14.9.2007 (Bhakeerathan @ Eelavan v. State of Tamil Nadu, rep. by its Secretary to Government, Public (Law & Order-F) Department, Chennai-9 and two others).

10. In view of the above, the order of detention dated 30.6.2007 is set aside and the habeas corpus petition is allowed. The detenu, K.Jayaraman, is directed to be released forthwith unless his presence is required in connection with any other case.

ATR

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Commissioner of Police
Trichy.
2. The Secretary
State of Tamil Nadu
Public (Law and Order) Department
Fort St. George, Secretariat
Chennai 600009.
3. The Secretary to Govt. of India
Ministry of Home Affairs
Department of Internal Security
North Block, New Delhi-1.
4. The Superintendent of
Central Prison
Tiruchirappalli.
5. The Public Prosecutor
High Court, Madras.

+1 cc to Mr.N.Chandrasekaran, Advocate Sr.No.68396.

BVR(CO)
DCP/18.12

H.C.P.No.1216 of 2007